

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 429X)

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN RAMSEY  
COUNTY, MN

Decided: September 8, 2005

BNSF Railway Company (BNSF) and Minnesota Commercial Railway Company (MNNR) jointly filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuances of Service for BNSF to abandon, and MNNR to discontinue service over, a 0.67-mile line of railroad between milepost 7.19, a point approximately 100 feet north of Interstate Highway I-694 in White Bear Township, and milepost 6.52, a point approximately 50 feet north of Beam Avenue in Maplewood, in Ramsey County, MN. Notice of the exemption was served and published in the Federal Register on August 10, 2005 (70 FR 46571).<sup>1</sup> The exemption is scheduled to become effective on September 9, 2005.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in the proceeding on August 15, 2005, setting forth environmental concerns and recommending that conditions be imposed on any decision granting abandonment authority. In the EA, SEA notes that the Minnesota Pollution Control Agency (MPCA), the state agency with jurisdiction over the National Pollution Discharge Elimination System (NPDES) requirements, has expressed concerns that the proposed salvage activities may have possible impacts to streams, rivers, lakes and wetlands from erosion and storm water runoff. Specifically, MPCA requests that any possible harm to these resources be mitigated by the following activities: mulching, seeding and sodding (without phosphorous containing fertilizers) along surface areas that may be impacted to provide permanent cover and stabilize the soils to prevent erosion; inspection of switching areas to locate potential oil spills; and implementation of a soil erosion control plan. MPCA also requests information regarding the removal and disposal of the railroad ties. SEA agrees with MPCA's requests and therefore recommends that BNSF consult with MPCA (Sheryl A. Corrigan, 651-292-5332), prior to commencement of any salvage activities, regarding these concerns.

SEA also notes that the U.S. Environmental Protection Agency – Region 5 (USEPA), has expressed concerns regarding the location of wetlands in the northwest quadrant of the project

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<sup>1</sup> While the August 10, 2005 notice also embraced the proposed discontinuance in STB Docket No. AB-882 (Sub-No. 1X), Minnesota Commercial Railway Company–Discontinuance of Service Exemption–in Ramsey County, MN, the environmental conditions discussed in this decision are imposed only on the proposed abandonment.

area. USEPA suggests that, to ensure that the wetland area is protected prior to salvage operations, the following measures be completed: the removal of track and track materials should be accomplished using the right-of-way and existing public and private crossings for access; the placement of silt fencing adjacent to the wetlands to control erosion; and the reseeding of areas disturbed during salvage operations using a mix of native wetland plants approved by the National Resources Conservation Service (NRCS). Accordingly, to ensure that USEPA's concerns are addressed, SEA recommends that BNSF consult with USEPA (Kathleen Kowal, 312-353-5206), prior to salvage operations.

SEA further notes that the Minnesota Historical Society (SHPO) has indicated that the rail line is eligible for listing in the National Register of Historic Places (National Register) and would be adversely affected by the proposed abandonment. Accordingly, SEA recommends that BNSF retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are eligible for listing or are listed in the National Register until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

Comments to the EA were due August 30, 2005. By letter filed on August 30, 2005, the City Maplewood (the City) advises that, contrary to the statement in the EA that the bridge over Interstate Highway 694 will be removed, the bridge will be left in place. According to the City, the environmental and historic report mistakenly indicated that the bridge would be removed as part of planned salvage operations. SEA does not recommend any change to its recommended conditions or new conditions as a result of this correction. Accordingly, the environmental conditions recommended by SEA in the EA will be imposed.

On August 2, 2005, the City filed a request for the issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29. The City has submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response filed on August 9, 2005, BNSF states that it consents to the issuance of a NITU.

Because the City's request complies with the requirements of 49 CFR 1152.29 and BNSF is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, BNSF may fully abandon the line subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on August 10, 2005, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking for a period of 180 days from the service date of this decision and notice (until March 7, 2006), and subject to the conditions that BNSF shall: (1) consult with MPCA (Sheryl A. Corrigan, 651-292-5332), prior to commencement of any salvage activities, regarding possible impacts to water bodies and wetlands, mulching, seeding and sodding, inspection of switching areas for oil spills, implementation of a soil erosion control plan, and the disposition of railroad ties; (2) consult with USEPA, (Kathleen Kowal, 312-353-5206), regarding the removal of track and track materials using the right-of-way and existing public and private crossings for access, the use of silt fencing along the edge of the wetland area to control erosion, and the reseeded of areas disturbed during salvage operations using a mix of native wetland plants approved by NRCS; and (3) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are eligible for listing or are listed in the National Register until completion of the section 106 process of the NHPA.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by March 7, 2006, interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary